IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TAI KWAN CURETON, LEATRICE SHAW, ANDREA GARDNER, and ALEXANDER WESBY, individually and on behalf of all others similarly situated,	:	CIVIL ACTION
	:	NO. 97-131
Plaintiffs,	:	
v.	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	:	
Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J. July 1, 1999

Presently before the Court is Plaintiffs' motion for class certification and relief pursuant to Fed. R. Civ. P. 23. For the reasons discussed below, the motion is GRANTED IN PART. The Court will conclusively define the class and certify it under Rule 23(b)(2). However, due to the pending appeal on the merits, all matters pertaining to remedial relief, attorneys' fees, related non-taxable expenses, and taxable costs will be deferred until after the decision by the United States Court of Appeals for the Third Circuit.

I. BACKGROUND

On March 8, 1999, this Court granted summary judgment to Plaintiffs on their claim that the Division I initial eligibility rule of Defendant the National Collegiate Athletic

Association ("NCAA"), which, inter alia, requires students to attain a minimum score on either of two standardized tests (the SAT or the ACT) as a condition of eligibility to participate in intercollegiate athletics and/or receive athletically related financial aid during their freshman year, has an unjustified disparate impact against African-Americans in violation of Title VI of the Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. § 2000d et seq., and certain implementing regulations promulgated thereunder. See Cureton v. NCAA, 37 F. Supp.2d 687, 687-715 (E.D. Pa. 1999).

That order was subsequently amended on March 16th to reflect with more precision what was being declared illegal and what was being enjoined. See id. at 715-16. Although the Court additionally denied the NCAA's emergency motion for a stay of the amended injunction pending an appeal to the Third Circuit, see id. at 716-17, the NCAA succeeded in obtaining a stay from the Third Circuit shortly thereafter in conjunction with their pending appeal on the merits, see Cureton v. NCAA, No. 99-1222 (3d Cir. Mar. 30, 1999).

II. CLASS DEFINITION

As a threshold matter, the Court must define which individuals are members of the putative class. That is, which previously ineligible African-American student-athletes are entitled to benefit from this Court's rulings. In their moving papers, Plaintiffs originally sought nationwide certification of a Fed. R. Civ. P. 23(b)(2) class defined as follows:

> All present and future African-American student athletes and prospective student athletes who have graduated (or will graduate) from high school and who obtained (or will obtain) the minimum grade point average in a core curriculum of thirteen academic courses, as specified in

> NCAA Division I Bylaw 14.3 ("Proposition 16"), but who do not obtain the corresponding minimum standardized test score requirement to be full qualifiers, as specified in Proposition 16.

Pls.' Proposed Order at 1. Thereafter, before the NCAA had had an opportunity to respond to the outstanding motion, the parties engaged in discussions concerning class certification and they tentatively stipulated to the following revised definition:

> All present and future African-American student-athletes who have graduated (or will graduate) from high school and who obtained (or will obtain) the minimum grade point average in a core curriculum of thirteen academic courses as required by "Proposition 16" and now included in NCAA Division I Bylaw 14.3, but who did not (or will not) obtain the corresponding minimum standardized test score (after taking the standardized test) required to be full qualifiers, as specified in Proposition 16.

Parties' Proposed Order at 1-2 (submitted by Plaintiffs' counsel via letter dated Apr. 27, 1999). Moreover, they agreed that the term "student-athletes" would be defined as:

> (a) Those high school students who were, are, or will be solicited by a member of the athletics staff or other representative of athletics interests with a view toward the students' ultimate participation in a Division I intercollegiate athletics program, and those who graduated from high school and, while attending high school, were solicited by a member of the athletics staff or other representative of athletics interests with a view toward the students' ultimate participation in a Division I intercollegiate athletics program; or
>
> (b) Those high school students who attempt to seek a declaration of eligibility to participate in Division I freshman intercollegiate athletics under Proposition 16, and those students who graduated from high school and sought (or are seeking) a declaration of eligibility to participate in Division I freshman intercollegiate athletics under Proposition 16.

Id. at 2. While the parties generously agreed to draft stipulated findings of fact to aid this Court in the disposition of the instant motion, their discussions came to an impasse when a disagreement arose as to which students were actually members of the above-defined class. The Court then instructed the NCAA to respond formally to the motion, see Cureton v. NCAA, Civ. A. No. 97-131 (E.D. Pa. May 26, 1999) (Docket No. 96), to which Plaintiffs filed a reply memorandum.

The crux of the disagreement involves the parties' respective interpretations of their proposed class definition in conjunction with the text of Proposition 16 and the so-called "'selection line,' which identifies individuals who 'would have an equal probability of graduating as anyone else whose combination of test score and grades puts them on the line." Cureton, 37 F. Supp.2d at 712 (quoting NCAA Research Staff Mem., May 18, 1998, at 4, NCAA 27893). Initially, however, both parties agreed that, for student-athletes who fail to attain the minimum standardized test scores required by Proposition 16 (820 SAT/68 ACT), those who possess a concomitant core grade-point average above that dictated by the selection line would be included in the putative class. For example, this would include the entire group of partial qualifiers, who are student-athletes "not qualifying under Proposition 16" because they possess "an SAT score between 720 and 810 (ACT score between 59 and 67) and a core GPA that produces a GPA-test combination score comparable to that required of qualifiers." Id. at 691.

Indeed, Plaintiffs had originally proposed this group of student-athletes in their opening papers. See Pls.' Mem. at 7. However, upon further consideration, they discovered an error and now maintain that the putative class should include individuals in two other categories. See Pls.' Reply Mem. at 1-6. The first category would be previously excluded student-athletes

who attain a standardized test score between the two end-points (820-1010 SAT or 68-86 ACT) and who concomitantly possess a core grade-point average somewhere between 2.000 and 2.500. The second would be previously excluded student-athletes who fail to attain the minimum standardized test score (820 SAT or 68 ACT) and who concomitantly possess a core grade-point average below that required by the selection line, but presumably not below the absolute minimum of 2.000 required under Proposition 16. Under a generous construction of these categories, it appears that Plaintiffs wish to expand the putative class to include all student-athletes who simply possess a minimum core grade-point average of 2.000, irrespective of their standardized test score.

By contrast, the NCAA disputes that student-athletes who fall below the selection line should ever be included in the putative class. Using the selection line as a lower boundary, the NCAA contends that a putative class including only those student-athletes above the selection line "reaches all the individuals who are excluded from being full qualifiers under Proposition 16 solely because they failed to meet the minimum standardized test score requirement (820 SAT and 68 ACT), but who would become full qualifiers under the completely open-ended index (Model 4) proposed by plaintiffs as one of the 'equally effective' alternatives to Proposition 16." Def.'s Mem. at 2.

Curiously, however, the NCAA gives no justification for why this Court should extrapolate the selection line beyond that dictated by Proposition 16. To review, the rule

> increased the number of required core courses to 13 and introduced an initial eligibility index or "sliding scale." Using the index, the student-athlete could establish eligibility with a GPA as low as 2.000, provided the student also presented an SAT score of 1010 or an ACT sum (as

> opposed to composite) score of 86. At the other end of the index, a minimum 820 SAT or 68 ACT sum score establishes the floor for students with GPAs of 2.500 or higher.

Cureton, 37 F. Supp.2d at 691. The NCAA now merely "assumes" that a full sliding scale based on Proposition 16 should be utilized in determining which individuals would be included in the putative class. See Def.'s Mem. at 2.

Once again, to be clear, in both the March 8, 1999 and March 16, 1999 orders, the Court concluded that the minimum standardized test score component of Proposition 16 caused an unjustified disparate impact in violation of Title VI. "[T]he Court expressed no opinion on the propriety of requiring additional high school coursework or using a core-GPA cutoff in formulating an initial eligibility rule." Cureton, 37 F. Supp.2d at 716. The Court also did not express any opinion whatsoever on the NCAA's sliding scale mechanism. "That is because Plaintiffs only challenged whether the use of the minimum standardized test score cutoffs were permissible under Title VI." Id. The Court subsequently enjoined the NCAA "from denying eligibility based on the minimum standardized test score cutoffs found in Bylaw 14.3." Id.

However, Proposition 16 was drafted ostensibly to be a "double-cut" or "conjunctive" rule that combines the use of a core grade-point average, the standardized test score, and the sliding scale into one integrated whole. That is, once the test score cutoff requirement is declared illegal, it is difficult to identify what residual rule, if any, survives. That is precisely why the Court stated that

> [s]hould the NCAA interpret the import of the amended order as allowing them to determine eligibility based solely on the course and core-GPA requirements of the bylaw, that is a matter internal to the NCAA and its governance over

> the Division I membership. As the NCAA correctly posits, such a reading of the order should be determined first by the NCAA in accordance with its own rules and practices on other aspects of initial eligibility, and not by this Court, and certainly not with either judicial approval or disapproval of such a practice.

Id. (citation and internal quotations omitted).

One thing, however, is certain: the NCAA's current position, that the sliding scale ought simply to be extrapolated out linearly so as to be applicable to student-athletes who have attained standardized test scores below the absolute minimum cutoffs, has no basis in fact or logic. Proposition 16 does not speak at all to student-athletes with such test scores and thus, it would be wholly improper to "assume" that adopting the full sliding scale of Model 4 makes any logical sense at all.

Plaintiffs' position, construed in its most generous form that student-athletes simply need to attain a minimum core grade-point average of 2.000, also flies in the face of reason because it would create an illogical discontinuity at the lower end-point of Proposition 16. That is, a student-athlete with an 820 SAT/68 ACT would need to possess a 2.500 core grade-point average, but a student-athlete with an 810 SAT/67 ACT would suddenly be included in the class if he/she merely possesses a 2.000 core grade-point average. Such a reading of a residual rule is plainly inconsonant.

If there is any assumption to be made, it is that a residual rule exists at all. On that supposition, the open interpretive question is the meaning of the phrase "who obtained (or will obtain) the minimum grade point average in a core curriculum of thirteen academic courses as required by 'Proposition 16,'" in light of the fact that the sliding scale mechanism fails to

isolate a single minimum required grade-point average. As the Court interprets Proposition 16, the only logically consistent interpretation is to extend the 2.500 core grade-point average horizontally as the minimum requirement for those student-athletes who fail to attain at least an 820 SAT/68 ACT standardized test score.

It follows then that, for those student-athletes whose standardized test scores fall between 820-1010 SAT/68-86 ACT, the sliding scale would remain intact, thereby gradually reducing the core grade-point average requirement from 2.500 to 2.000. Moreover, although this lawsuit is not concerned about the status of African-American student-athletes who attain a standardized test score in excess of 1010 SAT/86 ACT, extrapolating a minimum required 2.000 core grade-point average would be consonant with the interpretive principles adopted by the Court here. Therefore, of the two aforementioned categories proposed by Plaintiffs, only previously excluded student-athletes who fail to attain the minimum standardized test score (820 SAT or 68 ACT) and who concomitantly possess a core grade-point average below that required by the selection line (but at least equal to 2.500) would be included in the putative class.

While the NCAA cautions against altering or expanding the scope of a judgment that is on appeal, see Def.'s Mem. at 3, the Court sincerely believes that no such transgression has been committed by the foregoing interpretation. Moreover, even if any modification of the judgment has occurred, it was rendered necessary by the Court's assumption (and the NCAA's continued insistence) that any residual rule remains at all.

III. CLASS CERTIFICATION

Having defined the putative class, the Court next addresses whether that class should be certified. In this regard, the Court is cognizant of the fact that both parties have previously stipulated to certification, but will nonetheless decide this issue independently of any stipulation having taken place.

To obtain certification, Plaintiffs must satisfy the four prerequisites of Fed. R. Civ. P. 23(a), along with a showing that the action is maintainable under one of the subsections of Fed. R. Civ. P. 23(b). See Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 117 S. Ct. 2231, 2245 (1997); accord Barnes v. American Tobacco Co., 161 F.3d 127, 140 (3d Cir. 1998) (quoting Amchem), cert. denied, 119 S. Ct. 1760 (1999). Plaintiffs, as the proponents of the putative class, have the burden of establishing a right to class certification. See Davis v. Romney, 490 F.2d 1360, 1366 (3d Cir. 1974).

A. Fed. R. Civ. P. 23(a) Prerequisites

Under Rule 23(a), one or more members of a class may sue as representative parties on behalf of the entire class only if: (1) the class is so numerous that joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy of representation). "The requirements of Rule 23(a) are meant to assure both that class action treatment is necessary and efficient and that it is fair to the absentees under the particular circumstances." Baby Neal ex rel. Kanter v. Casey, 43 F.3d 48, 55 (3d Cir. 1994).

1. Rule 23(a)(1) -- Numerosity

To meet the numerosity requirement, "[t]he court must find that the class is 'so numerous that joinder of all members is impracticable.'" In re the Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d 283, 309 (3d Cir. 1998) (quoting Fed. R. Civ. P. 23(a)(1)), cert. denied, 119 S. Ct. 890 (1999). Impracticability of joinder does not mean impossibility, but rather that the difficulty or inconvenience of joining all members of the putative class calls for class certification. See Pabon v. McIntosh, 546 F. Supp. 1328, 1333 (E.D. Pa. 1982) (Shapiro, J.). Impracticability itself depends on an examination of the specific facts of each case and imposes no absolute numerical limitations. See General Tel. Co. of the Northwest, Inc. v. EEOC, 446 U.S. 318, 329 (1980); Gurmankin v. Costanzo, 626 F.2d 1132, 1135 (3d Cir. 1980) ("We believe that the numerosity requirement must be evaluated in the context of the particular setting . . .").

While the size of the class may at times alone be dispositive, see, e.g., Moskowitz v. Lopp, 128 F.R.D. 624, 628 (E.D. Pa. 1989) (Bechtle, J.) (finding joinder impracticable because class numbered in thousands), factors beyond the number of putative class members that are relevant to determining impracticability include the ease of identifying members and determining addresses, ease of service on members if joined, geographic dispersion, and the ability of class members to pursue individual suits, see Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp., 149 F.R.D. 65, 74 (D.N.J. 1993). See also Eisenberg v. Gagnon, 766 F.2d 770, 785-86 (3d Cir.) ("[t]he allegation of more than 90 geographically dispersed plaintiffs met the numerosity requirement of Fed. R. Civ. P. 23 (a)(1)"), cert. denied, 474 U.S. 946 (1985).

From this Court's prior discussion, it is apparent that Plaintiffs underestimated their numerosity projections in their opening papers, and perhaps overestimated the same in their

reply papers after discovering their error. However, even under Plaintiffs' original calculations, the numerosity requirement has been easily met here. African-American student-athletes in the putative class who are above the selection line amount to 226 in number each year. See NCAA Research Staff Mem., May 18, 1998 (App. B thereto), at M-0003082 (attached as Exhibit 1 to Pls.' Mem.). Since Proposition 16 will have affected four classes of in-coming freshmen (academic year 1996-1997 through 1999-2000), approximately 904 putative class members exist. See id. Assuming an uniform distribution below the selection line, approximately 151 (16% of the total area below the selection line) additional student-athletes each year (or 604 over the relevant four-year period) would be in the putative class, for a comprehensive total of 1,508. See id.

Under these calculations, joinder of all members is patently impracticable. Indeed, the Court readily adheres to the principle that "'numbers in excess of forty, particularly those exceeding one hundred or one thousand have sustained the requirement.'" Weiss v. York Hosp., 745 F.2d 786, 809 n.35 (3d Cir. 1984) (quoting 3B James Wm. Moore, et al., Moore's Federal Practice ¶ 23.05[1], at 23-150 (2d ed. 1985)), cert. denied, 470 U.S. 1060 (1985). Moreover, due to the nationwide character of this lawsuit, it is beyond obvious that factors such as geographic constraints and the ease of identifying all the members and their addresses make the putative class so numerous as to make joinder impracticable. On this record, the Court finds that Rule 23(a)(1) has been fulfilled.

2. Rule 23(a)(2) -- Commonality

The commonality inquiry asks whether "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This

> requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class. Because the requirement may be satisfied by a single common issue, it is easily met. . . . Furthermore, class members can assert such a single common complaint even if they have not all suffered actual injury; demonstrating that all class members are subject to the same harm will suffice.

Baby Neal, 43 F.3d at 56 (citations omitted). Accordingly, "'the threshold of commonality is not high.'" In re School Asbestos Litig., 789 F.2d 996, 1010 (3d Cir.) (quoting Jenkins v. Raymark Indus., Inc., 782 F.2d 468, 472 (5th Cir. 1986)), cert. denied, 479 U.S. 852, 915 (1986). In general, the alleged existence of a common discriminatory practice satisfies the commonality requirement. See Anderson v. Department of Pub. Welfare, 1 F. Supp.2d 456, 461 (E.D. Pa. 1998) (Kauffman, J.).

It is plain that the commonality requirement is easily met in this case. Plaintiffs allege that the putative class members share the following common questions of fact and law:

> (a) Whether the adoption, implementation and/or enforcement of the NCAA's minimum test score requirement under Proposition 16 is having an unjustifiable disparate impact on African-American student-athletes;
>
> (b) Whether the disparate impact from the NCAA's Proposition 16 constitutes discrimination in violation of Title VI and certain administrative regulations promulgated under that statute; and
>
> (c) Whether, as a result of the minimum test score component of Proposition 16, African-American student-athletes have been, and will continue to be, disproportionately denied: the opportunity to compete in intercollegiate athletics at Division I

> Schools during their freshman year; admission to Division I Schools; athletic scholarships by Division I Schools (or provided less athletically-related financial aid); and/or recruiting opportunities by Division I Schools (or provided with fewer recruiting opportunities).

Compl. ¶ 9. Plaintiffs further attest that other issues common to the putative class members include whether there is a private right of action for disparate impact discrimination under Title VI and its implementing regulations, and whether the NCAA is subject to suit under Title VI and its implementing regulations. See Pls.' Mem. at 11.

It is indisputable that all the putative class members share these and numerous other common questions of fact and law. This action seeks injunctive and declaratory relief for the NCAA's operation of a facially neutral selection practice that this Court has already determined to have an unjustified disparate impact against the very class of persons who are seeking certification. The Court finds that Rule 23(a)(2) has been easily satisfied under these circumstances.

3. Rule 23(a)(3) -- Typicality

The typicality requirement is satisfied if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). While similar, the typicality requirement is distinct from commonality. "Typicality asks whether the named plaintiffs' claims are typical, in common-sense terms, of the class, thus suggesting that incentives of the plaintiffs are aligned with those of the class." Baby Neal, 43 F.3d at 55. "The typicality criterion is intended to preclude certification of those cases where the legal theories of the named plaintiffs potentially conflict with those of the absentees by requiring that the common claims are comparably central to the claims of the named plaintiffs as to the claims of the

absentees." Id. at 57. "[F]actual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members and if it is based on the same legal theory." Hoxworth v. Blinder, Robinson & Co., 980 F.2d 912, 923 (3d Cir. 1992). Thus, "[a]ctions requesting declaratory and injunctive relief to remedy conduct directed at the class" usually satisfy the typicality requirement. Baby Neal, 43 F.3d at 58. Commonality and typicality overlap in that they hinge on whether the class members have similar claims. However, commonality tests the sufficiency of the class itself by focusing on the class claims, while typicality tests the sufficiency of the named plaintiff by focusing on the relation between the named plaintiff and the class as a whole. See Hassine v. Jeffes, 846 F.2d 169, 176 n.4 (3d Cir. 1988).

Once again, it is evident that the NCAA's promulgation of Proposition 16 to deem ineligible both the named plaintiffs and the putative class members affects the two groups in exactly the same discriminatory fashion. Plaintiffs' action seeking declaratory and injunctive relief to enjoin the NCAA is typical of the putative class since is it "based on patterns or practices not special or unique to [Plaintiffs,] [and] a significant number of other members of the class have been similarly victimized by the same patterns or practices." Weiss, 745 F.2d at 809 n.36 (emphasis and citations omitted). Thus, the Court finds that the typicality requirement has been satisfied.

4. Rule 23(a)(4) -- Adequacy of Representation

The adequacy of representation inquiry requires a finding that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Adequate representation depends on two factors: (a) the plaintiff's attorney must be qualified,

experienced, and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class." Wetzel v. Liberty Mut. Ins. Co., 508 F.2d 239, 247 (3d Cir.), cert. denied, 421 U.S. 1011 (1975). Interestingly, on this requirement alone, the burden is apparently on the party opposing certification to demonstrate that the representation is inadequate. See Lewis v. Curtis, 671 F.2d 779, 781 (3d Cir.), cert. denied, 459 U.S. 880 (1982).

First, the Court easily finds that all sets of counsel for Plaintiffs are qualified, experienced in civil rights and class action cases, and able to conduct the instant litigation in a professional manner. See Pls.' Mem. at 13-16. Second, Plaintiffs brought this action to challenge a facially neutral, generally applicable selection practice on behalf of all others similarly situated to them. As such, they bear no claim which is antagonistic to those of the other putative class members, and there is no indication that the instant lawsuit is the product of any collusion or that the named plaintiffs suffer from any infirmities rendering them incapable of representing the absent class members. Accordingly, in the absence of any challenge by the NCAA, the Court finds that the adequacy of representation requirement has been fulfilled.

B. Fed. R. Civ. P. 23(b) Prerequisite

Now the Court necessarily turns its attention to Rule 23(b), which provides for the types of class actions that are maintainable once the requirements of subsection (a) have been met. Plaintiffs seek certification under subsection (b)(2), which requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Because this Court has already entered such relief, to wit, declaring Proposition 16

illegal and enjoining the NCAA from denying eligibility based on the bylaw's standardized test score component, then a fortiori the Rule 23(b)(2) requirement has been met.

Accordingly, the Court finds that a Rule 23(b)(2) class may be certified on behalf of all African-American student-athletes who fall within the class definition articulated by the Court in Part II., supra.

IV. OTHER MISCELLANEOUS MATTERS

In their motion, Plaintiffs also requested certain remedial relief on behalf of themselves and the other class members. Moreover, the docket reflects a prior order instructing Plaintiffs to file their motion for attorneys' fees, related non-taxable expenses and taxable costs within 30 days of the disposition of the instant motion. See Cureton v. NCAA, Civ. A. No. 97-131 (E.D. Pa. Mar. 19, 1999) (Docket No. 84).

However, both parties are aware that they were informed, by letter dated and faxed from chambers on April 13, 1999, that the Court felt it appropriate to proceed solely on the matter of class certification in light of the pending appeal before the Third Circuit. Accordingly, the resolution of these other matters will be deferred pending that outcome.

V. CONCLUSION

For the foregoing reasons, a Rule 23(b)(2) class will be certified. However, all other matters, including the issue of the remedial relief to which the class may be entitled, will be deferred until after the Third Circuit has rendered its decision on the pending appeal on the merits. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TAI KWAN CURETON, LEATRICE SHAW, ANDREA GARDNER, and ALEXANDER WESBY individually and on behalf of all others similarly situated,	:	CIVIL ACTION
Plaintiffs,	:	NO. 97-131
v.	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	:	
Defendant.	:	

O R D E R

AND NOW, this 1st day of July 1999, upon consideration of Plaintiffs' Motion for Class Certification and Relief (Docket Nos. 88 and 90), Defendant's response thereto (Docket Nos. 97 and 98), and Plaintiffs' reply memorandum (Docket No. 99), it is hereby ORDERED that Plaintiffs' motion is GRANTED IN PART, in accordance with the accompanying memorandum.

IT IS FURTHER ORDERED that:

(1) This action for declaratory and injunctive relief satisfies the criteria set forth in Federal Rule of Civil Procedure 23(a) and 23(b)(2) and is certified as a class action under Federal Rule of Civil Procedure 23(b)(2) ("Class").

(2) The Class is defined as: "All present and future African-American student-athletes who have graduated (or will graduate) from high school and who obtained (or

will obtain) the minimum grade-point average in a core curriculum of thirteen academic courses as required by 'Proposition 16' and now included in NCAA Division I Bylaw 14.3, but who did not (or will not) obtain the corresponding minimum standardized test score (after taking the standardized test) required to be full qualifiers, as specified in Proposition 16."

(3) As used in the Class definition, the term "student-athletes" means:

(a) Those high school students who were, are, or will be solicited by a member of the athletics staff or other representative of athletics interests with a view toward the students' ultimate participation in a Division I intercollegiate athletics program, and those who graduated from high school and, while attending high school, were solicited by a member of the athletics staff or other representative of athletics interests with a view toward the students' ultimate participation in a Division I intercollegiate athletics program; or

(b) Those high school students who attempt to seek a declaration of eligibility to participate in Division I freshman intercollegiate athletics under Proposition 16, and those students who graduated from high school and sought (or are seeking) a declaration of eligibility to participate in Division I freshman intercollegiate athletics under Proposition 16.

(4) As used in the Class definition, the phrase "minimum grade-point average in a core curriculum of thirteen academic courses as required by 'Proposition 16' and now included in NCAA Division I Bylaw 14.3" means:

(a) For those high school students who did (or will) obtain a standardized test score less than 820 SAT/68 ACT, the minimum grade-point average is 2.500; and

(b) For those high school students who did (or will) obtain a standardized test score in the range 820-1010 SAT/68-86 ACT, the minimum grade-point average is to be determined by the "sliding scale" mechanism defined under Proposition 16.

(5) To the extent permitted by Federal Rule of Civil Procedure 23 or other applicable rules of law, either party may seek modification of the Class or certification of sub-classes of the Class if it appears appropriate or necessary in light of the relief that might be awarded should Plaintiffs prevail on appeal.

(6) Tai Kwan Cureton, Leatrice Shaw, Andrea Gardner, and Alexander Wesby, are designated as representatives of the Class.

(7) Trial Lawyers for Public Justice, P.C. and its Cooperating Counsel, Stradley, Ronon, Stevens & Young, LLP, and the Southern Poverty Law Center, are appointed as Class counsel.

(8) The Court hereby defers consideration of Plaintiffs' motion for remedial relief until a decision is rendered by the United States Court of Appeals for the Third Circuit on the pending appeal on the merits. Furthermore, the Court hereby defers the filing of Plaintiffs' motion for attorneys' fees, related non-taxable expenses, and taxable costs until a decision on the pending appeal and the entry of a briefing schedule by the Court.

BY THE COURT:

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RONALD L. BUCKWALTER, J.